

IN THE MATTER OF PHILIP SHAUN LOWE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr D J Leverton (in the chair)  
Mrs K Todner  
Mrs C Pickering

Date of Hearing: 29th April 2008

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of The Law Society by Ian Ryan, solicitor and partner in the firm of Bankside Law Solicitors of Thames House, 58 Southwark Bridge Road, London SE1 0AS on 23rd May 2006 that Philip Shaun Lowe, solicitor, might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think fit.

The allegations against the Respondent were that he had been guilty of conduct unbefitting a solicitor in the following particulars:-

- (i) That he acted in a way which was fraudulent, deceitful, or otherwise contrary to his position as a solicitor.
- (ii) That, by his actions, he compromised or impaired or acted in a way which was likely to compromise or impair any of the following:-
  - (a) His independence or integrity

- (b) His good repute or that of the solicitors' profession.
- (iii) That he failed to act in his client's best interests.

By a supplementary statement of Ian Ryan dated 10th October 2006 it was further alleged against the Respondent that he had been guilty of conduct unbecoming a solicitor in the following particulars namely:-

- (iv) That he failed to keep books of accounts properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998.
- (v) That he deliberately and improperly utilised client's funds for his own benefit.
- (vi) That he raised bills for costs that he knew he could not justify with the intention of misleading the Investigation Officer of The Law Society .
- (vii) That on a separate occasion and deliberately he sought to mislead the Investigation Officer of The Law Society.
- (viii) That he acted improperly in a conflict of interest situation.
- (ix) That he failed to give clients adequate information with regard to costs.

By a second supplementary statement of Ian Ryan dated 11th January 2008 it was further alleged against the Respondent that he had been guilty of conduct unbecoming a solicitor in the following particulars:-

- (x) That he was convicted of one offence of using a false instrument with intent contrary to Section 3 of the Forgery and Counterfeiting Act 1981 and ordered to pay a fine of £515.00.
- (xi) That he behaved in a manner unbecoming a solicitor of the Supreme Court.

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 29th April 2008 when Ian Ryan appeared as the Applicant and the Respondent was represented by G R Edwards, solicitor and partner in the firm of Crangle Edwards, solicitors of 15 Edge Lane, Stretford, Manchester M32 8HN.

The Evidence before the Tribunal included the admissions of the Respondent to allegations (iv) to (xi). The Applicant requested that allegations (i) to (iii) be left on file.

**At the conclusion of the hearing the Tribunal made the following Order:-**

The Tribunal Orders that the Respondent, Philip Shaun Lowe, solicitor, of c/o his solicitors Crangle Edwards, 15 Edge Lane, Stretford, Manchester, M32 8HN be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of Investigation Officer of the Law Society.

Note: The Order has been corrected under the 'slip rule' to show the correct first name of the Respondent.

**The facts are set out in paragraphs 1 - 54 hereunder:-**

1. The Respondent born in 1965 was admitted as a solicitor in 1996 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent practised on his own account under the style of Lowe & Co, 43 Main Street, Crosshills, Keighley, West Yorkshire BD20 8TT.
3. The Law Society resolved to intervene into the Respondent's practice and the intervention was effected on 8th June 2006.

Allegations (iv) to (ix)

4. An Investigation Officer of The Law Society carried out an inspection of the Respondent's books of account commencing on 4th July 2005 and produced a report dated 27th February 2006.
5. The Investigation Officer identified that the Respondent's books of account had not been kept properly written up and that a cash shortage of £35,332.26 existed as 31st May 2005 in respect of client funds either wrongly paid into office account (£16,912.26) or wrongly transferred from client account to office account (£18,420.00).
6. The cash shortage of £35,332.26 was rectified by transfers from the office to client bank account between 15th July 2005 and 13th December 2005, totalling £29,902.26 and by payments from the office bank account to relevant third parties between 30th June 2005 and 17th August 2005 totalling £5,430.00.

Client Funds Withheld from a Client Bank Account

7. Client funds totalling £16,912.26 which should properly have been paid into the client bank account were paid directly into the office bank account between 29th January 2003 and 27th May 2005. Details of the matters were set out in the report. Two matters are set out below by way of example:-

Mr P and Ms W - £6,500.00

8. The firm acted on behalf of Mr P and Ms W in the purchase of their property at a purchase price of £300,000.00. The Respondent explained that a former employee and licensed conveyancer had conduct of the matter.
9. The Respondent said that his clients alerted him, in early 2005, to the fact that there had been a discrepancy between the purchase price notified by the firm to the Inland Revenue of £250,000.00 and that actually paid on completion of £300,000.00. That discrepancy was discovered by Mr P and Ms W when they attempted to sell a portion of their land.

10. Completion took place on 4th December 2002 and the Respondent agreed the Stamp Duty payable on the purchase price of £300,000.00 was £9,000.00.
11. An undated completion statement said to have been provided to Mr P and Ms W by the firm, requested that they provide the sum of £11,238.60 inclusive of Stamp Duty of £9,000.00, to complete their purchase. The clients stated that the Respondent personally visited them to collect a cheque in that amount. That cheque was paid directly into the office bank account on 14th April 2003.
12. On 17th April 2003, the client ledger account held on behalf of Mr P and Ms W recorded a payment of £2,500.00, from the office bank account, to the Inland Revenue. The office bank account cheque book stub recorded the payee of this cheque as "Inland Revenue - Stamp duties re P and W".
13. The Respondent was asked to explain why only £2,500.00 had been paid to the Inland Revenue when he had agreed previously that the correct liability was £9,000.00. The Respondent said that the document sent to the stamping office "must have said £250,000.00". A purchase price of £250,000.00 would have warranted Stamp Duty of £2,500.00. He confirmed that the £11,238.60, received from the clients was not recorded on any client's ledger and that the funds were paid into the office bank account instead of client bank account.
14. The Respondent stated that the fee earner had prepared the Stamp Duty form which was submitted to the stamp office but confirmed that he had signed that form.
15. The Respondent agreed that the sum of £6,500.00 (£9,000.00 - £2,500.00) had been withheld from the client bank account and used for his benefit and that this represented a shortage as at the inspection date.
16. On 19th August 2005, after a period in excess of two years and during the course of the inspection, The Respondent transferred £6,500.00 from the office bank account to client bank account.
17. The Respondent was asked if he had knowingly submitted documentation to the Inland Revenue which recorded an incorrect purchase price in an attempt to misappropriate £6,500.00 of his clients' funds. The Respondent replied "no".

Mrs EC - £3,672.26

18. The firm acted in the administration of the estate of the late Mrs C and the Respondent had conduct of the matter.
19. On 14th February 2003, the firm received £3,672.26, on behalf of the estate with respect to a life assurance policy and this was paid directly into the office bank account. This caused the office side of the relevant client ledger account to show a credit balance. A credit on the office side of the client ledger could be an indication that client money was not correctly held in the client bank account on their behalf.
20. On 28th June 2005, the day after the Respondent received notification of the inspection, an invoice in the sum of £3,751.48 was posted to the office side of the late

Mrs C's client ledger account. This posting had the effect of removing the office credit balance which would have alerted the investigator to the potential breach had it remained. To this extent, the posting therefore had the effect of an attempt to conceal the fact that £3,672.26 of client monies had been lodged in the office bank account. The Respondent agreed that the bill he had initiated was not a proper bill payable from client funds; he had not done work to warrant that bill and had not provided the executors with a copy of it. He said "It is money due to the clients".

21. On 15th July 2005, after a period in excess of two years, the Respondent transferred £3,672.26 from the office to client bank account.
22. The Respondent agreed that the sum of £3,672.26 had been withheld from the client bank account and that this represented a shortage as at the inspection date. He said he was unable to provide an explanation as to why client money had been paid directly into the office bank account. He was asked to explain why he had utilised his client's money for his own benefit, for a period in excess of two years, he said he had not realised that he had until it had been brought to his attention.
23. The Investigation Officer asked the Respondent why, when notified of the inspection, he had initiated adjustments to his accounts which had the effect of concealing the fact that he had paid £3,672.26 of clients' money into his office bank account. He replied "because I panicked".
24. The Respondent was asked whether he considered his actions to be those which would be expected of an honest solicitor, he said "by the sound of it, no".

#### Client funds wrongly transferred

25. Client funds totalling £18,420.00 which should properly have been retained in client bank account were transferred to the office bank account between 13<sup>th</sup> May 2004 and 3<sup>rd</sup> May 2005. Details were set out in the report and two matters are set out by way of example below:-

#### Mr W - £15,000.00

26. The firm acted on behalf of Mr W, the Respondent in divorce proceedings. The Respondent had conduct of the matter.
27. A consent order, dated 5<sup>th</sup> May 2004, recorded that the parties consented to Mr W receiving a lump sum payment of £15,000.00 and this sum was received on 3<sup>rd</sup> September 2004.
28. The Respondent subsequently made the following transfers, from the client bank account to his office bank account:-

7 <sup>th</sup> September 2004	£ 1,000.00
5 <sup>th</sup> November 2004	10,000.00
5 <sup>th</sup> January 2005	2,000.00
3 <sup>rd</sup> March 2005	<u>2,000.00</u>
	<u>15,000.00</u>

29. Throughout the inspection, the Respondent maintained that the £15,000.00 lump sum payment had not been received in respect of this matter. He said that the £15,000.00 had been incorrectly recorded on Mr W's client ledger account and that the funds due to him were still held by the other side. The Respondent maintained that he introduced the £15,000.00 receipt to the client bank account.
30. On 12<sup>th</sup> January 2006, the Investigation Officer found correspondence on the client file dated 30<sup>th</sup> November 2004 which had previously not been seen, which indicated that the Respondent's explanation was incorrect. The Respondent agreed that the £15,000.00 received by the firm was received "from the other side" and was money due to Mr W. He further stated "I had put some monies in (to the client account) in the past and I got confused. It's Mr W's money, it shouldn't have been transferred to office and when I realised... obviously I got on with it and paid his money out straight away".
31. The Respondent accepted that he had lodged client money in the office bank account in breach of the Solicitors' Accounts Rules and that this was a shortage on the client bank account.
32. On 7<sup>th</sup> December 2005, the Respondent had transferred £15,000.00 from the office bank account to the client bank account and on 13<sup>th</sup> December 2005, the Respondent wrote to Mr W enclosing a cheque in the sum of £14,000.00. Costs in the sum of £1,000.00 inclusive of VAT had been deducted.
33. The Respondent said he could not recall why client money had been transferred to the office bank account but that he would have been the person who authorised the transfer. He said "It shouldn't have happened".

Mr and Mrs F - £1,730.00

34. The firm acted on behalf of Mr and Mrs F in the purchase of a property at a purchase price of £152,495.00. The Respondent confirmed that a trainee licensed conveyancer had day to day conduct of the matter under his supervision.
35. Completion took place on 30<sup>th</sup> June 2004. An undated completion statement recorded that a sum of £26,314.00 was required from the clients to complete the purchase; this included Stamp Duty of £1,530.00 and Land Registry fees of £200.00. As at the inspection date, Stamp Duty and Land Registry fees remained unpaid.
36. On 29<sup>th</sup> June 2004, the firm received £26,314.00 which was paid into the client bank account.
37. Following completion of the purchase on 30<sup>th</sup> June 2004 the client ledger account had a credit balance of £2,095.62 and on 19<sup>th</sup> July 2004 this sum was transferred to the office bank account. At that date Stamp Duty and Land Registry fees, totalling £1,730.00 remained unpaid.

38. On 15<sup>th</sup> July 2005, after a period in excess of 12 months, the Respondent transferred £1,580.00 from the office bank account to the client bank account. The Respondent subsequently paid Stamp Duty and Land Registry fees from his office bank account.
39. The Respondent agreed that the sum of £1,730.00 had been withheld from the client bank account and that this represented a shortage as at the inspection date. He was asked to explain why he had paid clients' money in the sum of £1,730.00, representing Stamp Duty and Land Registry fees, into his office bank account. He said "it was all transferred over (to the office account) on the basis it should have been paid out of the office".
40. The Respondent was asked why he had utilised his clients' money for his own benefit, for a period in excess of twelve months, he replied "It should have been paid, should the Stamp Duty, I don't know why [the fee earner] didn't pay it but it wasn't paid and I can't say anything more than that".
41. The Investigation Officer asked the Respondent why, when notified of the inspection, he had initiated adjustments to his accounts which had the effect of concealing the fact that he had paid £1,730.00 of clients' money into his office bank account. He replied "like I said before panicked".
42. The Respondent was asked whether he considered his actions to be those which would be expected of an honest solicitor, he said his answer was the same as before which was "No".

#### Conflict of Interest

43. The Report noted that the firm acted on behalf of the seller and buyer in a sale and purchase which completed on 3<sup>rd</sup> May 2005. The buyer Mr A who was an established client of the firm had previously purchased properties through the firm in the name of Mr S.
44. The Respondent initially said that he had no knowledge of this transaction but later confirmed that he represented one party and his trainee licensed conveyancer represented the other and confirmed that he probably checked the documentation.
45. The buyer Mr L through his attorney Mr M was a new client to the firm. The file recorded that Mr S/A was due to sell the property on some 22 days after his original purchase but the firm was not instructed in that sale.
46. The Respondent was asked if he considered whether he should have represented both parties and he replied "probably not". Asked whether there had been a conflict under Rule 6 the Respondent said "looking at it now, yes".
47. On 12<sup>th</sup> January 2006, the Respondent said that the client matter file with respect to this transaction had been confiscated by the police under a production order and that they ascertained that the Enduring Power of Attorney, produced by Mr M with respect to Mr L was a forgery.

Charges for Local Authority Search fees - Profit obtained by the firm not disclosed to the client

48. The firm routinely charged their purchasing conveyancing clients the sum of £135.10 in respect of local authority local search fees. The firm utilised the services of The Property Search Group ('PSG') to perform expedited local authority searches on its behalf and for which PSG charged the firm £98.00 or £100.00 dependent upon the particular local authority.
49. The Investigation Officer reviewed 39 client matters, which represented purchases during the period 7<sup>th</sup> June 2004 and 2<sup>nd</sup> June 2005, and the related PSG invoices. It was noted that in each of those matters the client care letter and completion statement quoted a local search fee of £135.10, when in fact the fee paid to PSG for the local search was either £98.00 or £100.00.
50. No reference was made in documentation provided to clients of the profit made by the firm when they were charged £135.10. The Respondent confirmed that no clients had been made aware of the profit.
51. The firm received a total profit of £1,428.90 with respect to the 39 client matters that were reviewed.
52. The Respondent explained that the charge of £135.10 was a historical amount included in the client care letter but he also agreed that he was aware of the charges made by PSG. The Respondent stated that money should be refunded to the clients but on 12th January 2006, the Respondent confirmed that he had not done so.

Allegations (x) and (xi)

53. On 5<sup>th</sup> November 2007 the Respondent was convicted of one offence of using a false instrument with intent and on 16<sup>th</sup> November 2007 he was ordered to pay a fine of £515.00.
54. The particulars of the offence were that the Respondent used an Oath for Administrators which was and which he knew or believed to be false with the intention of inducing the District Registrar to accept it as genuine.

**The Submissions of the Applicant**

55. The Respondent had admitted allegations (iv) to (xi) and had admitted dishonesty. The Respondent had not admitted allegations (i) to (iii) and the Applicant asked that they be left to lie on file.
56. The matters set out in the Investigation Officer's report were very serious and included issues of dishonesty.
57. The Respondent deliberately and improperly utilised clients' funds for his own benefit either by paying money directly into office account in respect of disbursements or transferring money from client to office account in respect of the same and then failing to pay those disbursements promptly or within a reasonable time thereby



having the benefit of those funds during the period in which the disbursements were not paid.

58. In addition and to compound his misconduct, on a number of matters the Respondent raised bills of costs that he knew he could not justify with the intention of misleading the Investigation Officer of The Law Society.
59. The Respondent also deliberately and improperly utilised clients' funds for his own benefit on the matter of W and he deliberately misled the Investigation Officer of The Law Society when questioned about that matter.
60. In relation to the conviction the Tribunal was referred to the Learned Judge's sentencing remarks.

### **The Submissions on behalf of the Respondent**

61. Mr Edwards, who had been involved in the Respondent's matter earlier and had represented him in the Crown Court proceedings, had been reinstructed in the present matter some seven days ago. The Respondent himself was not present and no discourtesy was intended. He was unable to afford the train fare and overnight cost of attendance. A member of the Respondent's family was paying for his representation.
62. The Respondent appreciated that the ultimate sanction would be imposed and Mr Edwards was not instructed to attempt dissuade the Tribunal from that. The Respondent wished however to depart from the profession with as much dignity as possible.
63. In relation to the conviction the Respondent had been acquitted of more serious allegations and had admitted the one charge found.
64. The Respondent had forged the signature of another local solicitor. This had been a matter of expedience as the deponent, believed to be a serving soldier, was in a great hurry. No harm had been done to the estate or anyone connected with it which might explain the lenient penalty imposed by the Crown Court.
65. Allegations (iv) - (ix) all arose out of the Respondent's practice which was intervened into in June 2006.
66. The Investigation Officer had had a difficult job and there had been much cause for concern. At the time Mr Edwards had responded to enquiries from The Law Society on the Respondent's behalf.
67. A number of large sums had been wrongly lodged in office account. They were returned in due course and interest paid. The Respondent had done what he could to put matters right.
68. The Respondent had fully accepted that he should not be practising and with the agreement of The Law Society caseworker Mr Edwards was to assist and supervise in closing the Respondent's firm down. Sadly Mr Edwards was unable to carry this out as the intervention was brought forward because of the criminal matter. This had

been unfortunate. The Respondent had been aware that his future in practice was diminishing and that he was not fit to practise as a sole practitioner but he had hoped to depart in an ordered way.

69. In particular the Respondent's daughter had taken his disgrace very much to heart and the Tribunal was given details of the serious effect this matter had had upon her. The Respondent was extremely concerned about his daughter and this was why he wished the record to be put straight.
70. The Respondent had been foolish but had suffered greatly.
71. The Respondent felt he had placed too much trust in others. He had had an inadequate cashier. Miss JM, the Respondent's conveyancing clerk, had been convicted and had received a 20 month sentence of imprisonment. It was understood she was still working in the legal profession and enquiries would be made but the Tribunal was asked to take note of that.
72. The Respondent was a good "staff officer" but not a "commander". His skills were not sufficient to run a practice alone. He trusted his staff implicitly. A lot of what he had wrongly said to the Investigation Officer was in an attempt to be loyal to his staff. Lack of supervision of his staff was his wrong doing and his undoing.
73. The Respondent would depart the profession after twelve years with sadness having initially qualified as a legal executive and then a solicitor.
74. The Respondent was anxious that the record be put straight. He had received very little personal benefit from what had occurred despite some reporting suggested that he had benefited financially. This was not a case in which monies had been wrongly taken outside of a solicitor's office in order to fund some millionaire lifestyle.
75. The Respondent was now living in rented accommodation.
76. The Respondent wished to depart with dignity and Mr Edwards hoped that he had been able to achieve that.

### **The findings of the Tribunal**

77. The Respondent had admitted allegations (iv) to (xi) and the Tribunal found them to have been substantiated. The Tribunal ordered that allegations (i) to (iii) be left on file not to be proceeded with without the consent of the Tribunal.

### Previous appearance of the Respondent before the Tribunal

78. On 28<sup>th</sup> September 2004 the following allegations were substantiated against the Respondent namely that he had been guilty of conduct unbecoming a solicitor in each of the following particulars namely:-
  - (i) That he failed to keep clients informed of the progress of their case and in particular that the case had been struck out;

- (ii) That he sent misleading letters to clients;
- (iii) That he failed to act in the clients' best interests;
- (iv) That he failed to inform his employers of a potential claim against the firm.

The Tribunal on that occasion said that:-

"These were serious allegations which all arose out of one incident. The public had to be able to trust their solicitors implicitly and in this case that trust had been severely damaged. The Tribunal had however considered carefully the explanations and mitigation put forward on behalf of the Respondent and had taken note of the references submitted on his behalf.

The Tribunal particularly took note of the fact that this incident took place at an early stage of the Respondent's career; that it had been hanging over him for over six years; that there had been a long delay of over four years since the complaint was made to the Law Society; that the Respondent had practiced without any difficulties by himself since the late 1990s; the Tribunal noted in particular the comments made by the complainant in his letter of 24th August 2002 when he clearly stated that he did not want the Respondent to lose his living or his position as a solicitor. Taking into account all the circumstances and the mitigating factors, the Tribunal considered that the appropriate penalty was a fine together with the payment by the Respondent of the Applicant's agreed costs."

- 79. The Tribunal on 29<sup>th</sup> April 2008 thanked Mr Edwards for his helpful mitigation and for setting out for the Tribunal the difficult background to these matters. The Tribunal took particular note of the Respondent's family circumstances and the details which had been given to the Tribunal regarding a particular family member.
- 80. The admitted matters were very serious. The preparation of a false Oath for Administrators and its use to induce a District Registrar to accept it as genuine was a matter which clearly showed that the Respondent, whether he had been acting in panic or from any other cause, should not be in practice as a solicitor. In addition he had admitted very serious breaches of the Accounts Rules and allegations of dishonesty. It was essential that the public was able to trust solicitors implicitly over financial matters. Any breach of that trust had serious consequences. It was right that the Respondent no longer be allowed to remain on the Roll of Solicitors and the Tribunal would so order.
- 81. The Tribunal noted that Mr Edwards was not in receipt of instructions in relation to costs and therefore as requested by the Applicant the Tribunal would order costs to be assessed if not agreed.
- 82. The Tribunal Ordered that the Respondent, Philip Shaun Lowe, solicitor, of c/o his solicitors Crangle Edwards, 15 Edge Lane, Stretford, Manchester, M32 8HN be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless

agreed between the parties to include the costs of the Investigation Officer of the Law Society.

Dated this 2<sup>nd</sup> day of September 2008  
On behalf of the Tribunal

D J Leverton  
Chairman